

While we have approved the four-tier system, we should not abandon any rights that Maryland citizens have today as unnecessary. That is why we came up with this committee amendment and that is why we would oppose Delegate Scanlan's removal of the provision altogether.

It has been in the Constitution since 1805. The Court of Appeals had said that the State of Maryland has always thought this was such an important matter that in 1805 an amendment was proposed and this amendment has been carried on in various forms since then. It is not a minor right, and it is a right that we think should be continued.

DELEGATE J. CLARK (presiding): Delegate Henderson.

DELEGATE HENDERSON: I rise to speak in favor of the Scanlan amendment. As far as the right of removal is concerned, the point can always be raised under the due process clause if there is a likelihood of prejudice growing out of any particular situation in the community.

Now, the matter is presently within the power. It is a procedural matter. It is within the joint power of the legislature and the Court of Appeals to implement this right of removal by rule and that rule can be altered if the legislature disapproved of the rule enacted by the Court of Appeals. It is within that joint operation which we have approved in the judicial branch.

I suggest that the Committee recommendation which would limit it to rule by the Court of Appeals would strip the legislature of that joint authority. I would prefer to see it taken out of the constitution altogether as the Scanlan amendment proposed.

I might say one more word in connection with this. The absolute right of removal which exists under the present Constitution has been more abused than any provision in the Constitution. Cases have been ready for trial and at the last moment by this absolute right of removal, this affidavit comes in. It has been used as a delaying tactic all over the State by counsel for insurance companies and others, but particularly in that field I would say.

It seems to me that the matter should be left in the joint authority of the legislature and the Court of Appeals insofar as it may go beyond the protection afforded by the Fourteenth Amendment. I would urge you to support the Scanlan amendment.

DELEGATE J. CLARK (presiding): The Chair recognizes Delegate Child to speak against the amendment.

DELEGATE CHILD: Mr. Chairman, I rise to speak against the amendment for the simple reason that Delegate Willoner's amendment is really re-writing the section which is now section 8. We have been asked to remove section 8, without really getting the combined and last judgment of the Committee on it.

I think that the Committee ought to look at section 8 which Delegate Willoner's amendment is a substitute for before they vote section 8 down.

Now, I will agree that we recognize that this rule in the Willoner amendment has been abused but we give the Court of Appeals the right to limit that rule. We had in mind that the Court of Appeals if a party wanted to move a civil case should give notice so many days before the case is set for trial so that there would be no surprise on the other side and no injustice done. But I do not think that we should eliminate section 8 until we see what Willoner and the other members of the Committee have agreed upon as a substitute for section 8.

For that reason, I oppose the Scanlan amendment.

DELEGATE J. CLARK (presiding): Delegate James.

DELEGATE JAMES: Mr. Chairman and fellow delegates: I want to argue for the Scanlan amendment with all the earnestness that I can muster.

I have practiced law since 1937 and I can say that over that period of time it is my considered opinion that the use of the power to remove has been an implement in the obstruction of justice. Anyone with experience in this field knows that it is very seldom used to really get a fair trial. It is used simply to delay and how can you have a good system of administration of justice when you have built into it a ready-made system of delay.

Now, the present law is rather incongruous. It refused to grant an absolute right of removal in serious criminal cases, but it gives an absolute right of removal in civil cases.

In other words, where a man may be incarcerated, the matter of removal is strictly in the discretion of the court, whereas if the matter involves property, no matter how small the amount of property involved,